

# **FREEDOM OF INFORMATION ACT GUIDE BOOK**



**HQ AFRC/SCTI  
(FOIA OFFICE)  
MARCH 2001**

## **WHAT IS THE FREEDOM OF INFORMATION ACT?**

The Freedom of Information Act (more often referred to as FOIA) established a presumption that records of the Executive Branch of the United States government are accessible to the people. This was not always the policy regarding federal information disclosure. Before the FOIA in 1966, the burden was on the individual to establish a right to examine these government records.

With the passage of the FOIA, the burden of proof shifted from the individual to the government. Those seeking information are no longer required to show a need for information. Instead, the "need to know" standard has now been replaced by a "right to know" standard. The government now has to justify its need for secrecy.

The FOIA sets standards for determining which records must be made available for public inspection and which records can be withheld from disclosure. The law also provides administrative and judicial remedies for those denied access to records. Above all, the statute requires federal agencies to provide the fullest possible disclosure of information to the public.

The policy of the Department of Defense to conduct its activities in an open manner and to provide the public with accurate and timely information concerning those activities. Therefore, if a record is requested by a member of the public, and the requester follows the rules for making a FOIA request, that record will be disclosed unless appropriately protected from disclosure by one or more of nine exemptions or by one of the three law enforcement record exclusions. The Treasury Department shall provide the maximum allowable disclosure of agency records upon request by any individual. Treasury shall also provide assistance to requesters to help them understand and comply with procedures established by the disclosure regulations.

## **FOIA RECORDS MANAGEMENT REQUIREMENTS**

**FOIA PROGRAM CORRESPONDENCE:** Maintain correspondence relating to overall administration of the FOIA under AFMAN 37-139, Table 37-19, Rule 23. Examples: Notification of special release procedures for a particular requester that is forwarded through MAJCOM from Air Force; general information concerning changes in the Act; FOIA issues provided for information and planning purposes.

**FOIA LOG.** Maintain your FOIA log under AFMAN 37-139, Table 37-19, Rule 28. Create a separate log for each year. Assign each request a number beginning with the year and in numerical sequence (01-001). Destroy FOIA logs after 2 years—same time corresponding case files are destroyed.

**FOIA Case Files.** Maintain all correspondence responding to a request under AFMAN 37-139, Table 37-19, Rule 24. This will include a copy of the request, requested records (unless too voluminous), Staff Judge Advocate review, OPR recommendation, release/recommended denial to HQ AFRC/SCTI (FOIA) memorandum, extension memos, DD Form 2086, copies of other required actions, and cash collection voucher for fees collected.

**FOIA REPORTS.** Maintain FOIA report submitted on DD Form 2654 under AFMAN 37-139, Table 37-19, Rule 31.

## **FOIA MANAGER DUTIES**

- ◆ Ensure administrative correctness of all FOIA actions processed.
- ◆ Control and process FOIA requests.
- ◆ Obtain recommendations from the OPR for records.
- ◆ Prepare or coordinate on all proposed replies to the requester. FOIA managers may sign replies to requesters when disclosure authorities approve the total release of records.
- ◆ Make determinations as to whether or not the nature of requests is simple or complex where multitrack FOIA request processing queues exist.
- ◆ Approve or initially deny any requests for expedited processing.
- ◆ Provide interim responses to requesters, as required.
- ◆ Provide a reading room for inspecting and copying records.
- ◆ Provide training.
- ◆ Review publications for compliance with FOIA.
- ◆ Conduct periodic program reviews.
- ◆ Approve or deny initial fee waiver requests.
- ◆ Make initial decision on chargeable fees.
- ◆ Collect fees.
- ◆ Send extension notices.
- ◆ Submit reports.
- ◆ Sign “no record” responses.
- ◆ Provide the requester the basis for any adverse determination (i.e. no records, fee denials, fee category determinations, etc.) in enough detail to permit the requester to make a decision whether or not to appeal the actions taken, and provide the requester with appeal procedures.

## PROCESSING FOIA REQUESTS

Upon receipt of a FOIA request:

1. Upon receipt of a FOIA request, record the date and time (usually on the bottom right corner of the letter). (**Note:** If received after 1200 hours enter the next day's date.) Consider a request received only when the requester:
  - a. has reasonably described the requested records;
  - b. states a willingness to pay fees set for his or her category;
  - c. has paid past FOIA debts;
2. Log the request and assign a case number (assign case numbers in a numerical sequence--01-001, 01-002, etc.) and suspense date.
3. Analyze each request to determine category of requester. If you think the requester's category differs from what the requester claims, ask the individual for more justification and state search for records will not begin until you have agreed on the category. (Attachment 1)

If the requester does not send the FOIA manager more justification in reasonable period of time (normally, 30 calendar days), the manager makes a final decision. (**Note:** Consult with HQ AFRC/SCTI before making final decision.)

4. Determine the fees according to the requester's category as defined below:

### **Category 1:**

- Commercial Requesters. The term commercial use refers to a request from, or on behalf of, one who seeks information for a use or purpose that furthers the commercial, trade, or profit interest of the requester or the person being represented. In determining whether a requester properly belongs in this category, determine the use to which a requester will put the documents requested.

### **Category 2:**

- Educational Institution Requesters. The term educational institution refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

- Noncommercial Scientific Institution Requesters. The term noncommercial scientific institution refers to an institution that is not operated on a commercial basis and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. **Note:** To be eligible for inclusion in the subcategories in (1) and (2) above, requesters must show they are making the request under the auspices of a qualifying institution and that they are not seeking the records for commercial use, but in furtherance of scholarly (from an educational institution) or scientific research (from an noncommercial scientific research institution).
- Representatives of the News Media. The term representative of the news media refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term news means information that is about current events or of current interest to the public. In the case of freelance journalists, regard them as working for a news organization, even though not actually employed by it.

To be eligible for this category, a requester must meet the news media criteria, and the request must not be for commercial use. A request for records supporting the news dissemination function of the requester is not a commercial use request.

### Category 3

- All Other Requesters. Requesters who do not fit into either of the other two categories.

## FEE ASSESSMENT

CATEGORY	SEARCH	REVIEW	DUPLICATION
Category 1 – Commercial	X	X	X
Category 2 – Educational/ Noncommercial/Scientific Institution/News Media			X (In excess of first 100 pages)
Category 3 -- Others	X (After first 2 hours)		X (In excess of first 100 pages)

5. Write to requesters who have failed to remit fees, notifying them that any future requests cannot be processed until past due payment is received. (Attachment 2)

6. Write to requesters who have not made arrangements to pay for the information or whose fees are more than \$15.00, telling them the category and cost of the request. (Attachment 3) Notify the OPR that the request will be held in abeyance pending acceptance of fees from the requester. (Attachment 4) If the requester fails to respond to request for fees acceptance within a reasonable period of time, usually 30 days, advise the requester the request has been closed. (Attachment 5)

7. Write to commercial requesters explaining that commercial requesters must pay charges for review of documents as well as charges for search and reproduction. (Attachment 6)

8. Answer fee waiver requests before processing. Do not consider this a denial. (Attachment 7)

9. Write the requester to acknowledge receipt of the request if the date or postmark (whichever is later) is more than 10 workdays. (Attachment 8) Inform the requester of any unusual problems with processing the request.

a. If, due to a significant number of pending requests, a response determination cannot be made within 20 working days, the request shall be processed in a multitrack processing system, based on the date of receipt, the amount of work and time involved in processing the requests, and whether the request qualifies for expedited processing. A minimum of three processing tracks shall be established, all based on first-in, first-out concept, and rank ordered by the date of receipt of the request. One track shall be a processing queue for simple requests, one track for complex requests, and one track shall be a processing queue for expedited processing. Determinations as to whether a request is simple or complex shall be made by each DoD Component. DoD Components shall provide a requester whose request does not qualify for the fastest queue (except for expedited processing as described below), an opportunity to limit in writing, the scope of the request in order to qualify for the fastest queue. This multitrack processing system does not obviate components' responsibility to exercise due diligence in processing requests in the most expeditious manner possible. (Attachment 9)

- **Simple** requests can be processed quickly with limited impact on the responding units. The request clearly identifies the records with no (or few) complicating factors involved. There are few or no responsive records. Only one installation is involved and there are no outside OPRs. There are no classified or nongovernment records. No deliberative process/ privileged materials are involved. The responsive records contain no (or limited) personal privacy information and do not come from a Privacy Act system of records. No time extensions are anticipated.
- **Complex** requests take substantial time and cause significant impact on responding units. Complications and delays are likely. Records sought are massive in volume. Multiple organizations must review/coordinate on requested records. Records are classified; originated with a nongovernment source; are part of the Air Force's decision-making process; or are privileged.

- **Expedited Processing.** A separate queue shall be established for requests meeting the test for expedited processing. Expedited processing shall be granted to a requester after the requester requests such and demonstrates a compelling need for the information. Notice of the determination as to whether to grant expedited processing in response to a requester's compelling need shall be provided to the requester within 10 calendar days after receipt of the request in the DoD Component's office that will determine whether to grant expedited processing. Once the DoD Component has determined to grant expedited processing, the request shall be processed as soon as practicable. Actions by DoD Components to initially deny or affirm the initial denial on appeal of a request for expedited processing, and failure to respond in a timely manner shall be subject to judicial review. (Attachment 10) If you deny a request for expedited processing notify the requester and provide appeal procedures in your response (Attachment 11)

10. If record is not reasonably described, write the requester and ask for more information. (Attachment 12)

11. Prepare tasking memorandum and forward request to appropriate functional area. (Include a suspense date (allow time for final signature/coordination/copying) that permits processing actions to be completed within a maximum of 20 workdays—usually 10-12 workdays). The OPR will search for the record and decide whether to release it. Attach a DD Form 2086, *Record of Freedom of Information (FOI) Processing Cost*, or DD Form 2086-1, *Record of Freedom of Information (FOI) Processing Cost for Technical Data*, to each request. This form gives the fees for charging, if any, and processing costs used to prepare the annual FOIA report. **It must be completed by the OPR even if the requesters are not charged for processing the request.** (Attachment 13)

**Contract related FOIA requests.** If the request is for contract related information the submitter of the contract data must be contacted for views on releasability. Give the contractor a reasonable period of time to object to disclosure with justification (no more than 30 calendar days). (Attachment 14)

Notify the requester that we must give the submitter of the data (contractor) the opportunity to comment before the Air Force makes a release determination. (Attachment 15)

If the submitter objects to release, but the Air Force release authority determines that the records are releasable, notify the submitter of the decision before releasing the data. (Attachment 16)

**Commander Directed Investigations.** Commander directed investigations may cite AFI 90-301, however, this does not mean the IG is the OPR for reviewing and redacting these reports. AFI 90-301 provides general guidance for procedures and format and should not be cited as the authority to conduct the investigation.

The appointing authority for a commander directed investigation is the release authority. This does not mean that a commander can deny release of an investigation just because he/she does not want to release it.



A FOIA request for a copy of a commander directed investigation, must be processed by the SC as any other FOIA request. It is the commander's responsibility to redact, or appoint someone to redact, the investigation. Only the information exempt according to DOD 5400.7R/AF SUP 1, paragraphs 10.1 through 10.9 may be withheld from the requester. The investigation, once redacted, must be reviewed by the Staff Judge Advocate (SJA).

A FOIA package received by HQ AFRC/SCTI not processed correctly, to include a legal opinion, will be returned. This will only delay a response to the requester.

12. Send the requester a letter, within 20 workdays after receipt of request, giving a final decision to release or deny the records. (Attachment 17)
13. If the requester withdraws the request, notify the OPR in writing. (Attachment 18)
14. When answering requests for lists of names and duty addresses, tell requester about mass mailing restrictions outlined in DoD 4525.8-M, Official Mail Manual. (Attachment 19)
15. If a delay occurs, send the requester a letter, within 10 workdays, giving the reason for a delay and a date (within 20 days after receipt of request) when the requester can expect a final decision. Grant extension for 10 additional workdays for one or more of these reasons: (Attachment 20)

All or parts of the requested records are not at the installation processing the request.

Fulfilling the request means collecting and reviewing an enormous number of records.

Other Air Force activities or other agencies need to be involved in deciding whether to release the records.

17. Send releasable records to requesters with a bill (if appropriate). (Attachment 21)
18. If you are processing a partial or total denial, ensure the following items are dispatched to HQ AFRC/SCTI within 3 workdays from date of receipt by the processing FOIA manager.

- a. Original request (including envelope).
- b. Two complete copies of the material requested.

One copy must clearly identify segments to be denied by using a **YELLOW** highlighter.

The other copy must be a clean, complete unredacted copy -- preferably the original.

- c. Written legal opinion from JA, citing justification for denial, giving appropriate exemptions or statutes listed in DOD 5400.7R/AF Sup 1.
- d. DD Form 2086 or DD Form 2086-1. Consolidate the forms if more than one form is used because of more than one OPR.

e. Letter of transmittal. (Attachment 22)

f. Any other administrative processing documents (i.e. suspense letter, extension letter, any correspondence generated in processing the case but not listed above).

g. Letter notifying the requester of the transfer. (Attachment 23)

19. Referrals:

a. Refer FOIA requests for records to another FOIA office when:

(1) Request is for records that belong to another activity or receive a misaddressed request. (Attachment 24). Notify the requester of this transfer. (Attachment 25)

(2) Have "no records" response and another activity confirms it has, or is likely to have, the requested records.

(3) Records originated with another activity

(4) Release or deny records in response to a request and the OPR indicates other activities may also have responsive records. (Attachment 26)

(5) Requests for unaltered publications and processed documents, such as maps, charts, regulations, and manuals that are available to the public through an established distribution system with or without charge are usually answered by referring FOIA requesters to the proper sales outlet or other appropriate source without using the FOIA. The National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, sells current Air Force standard numbered (departmental) publications, but does not stock superseded, obsolete, rescinded, classified, For Official Use Only (FOUO), limited (L), or "X" distribution Air Force publications. FOIA requests for these publications go through normal FOIA channels to the OPR for a release determination. People can obtain documents published in the Federal Register without using the FOIA.

b. For requests that would involve many referrals, tell the requester where to address the request, rather than referring it.

## **FOR OFFICIAL USE ONLY (FOUO) DOCUMENTS OR RECORDS**

**REFERENCE:** DoD Regulation 5400.7/AF Supplement 1/Chapter 4

### **Do you know if documents in your office with FOUO markings actually contain FOUO information?**

Documents can be marked FOUO when the content needs protection and the documents qualify as being exempt from public release in accordance with the Freedom of Information Act (FOIA).

### **What are the criteria for designating documents FOUO?**

A FOUO marking does not mean you must withhold a record under FOIA. The FOIA provides nine exemptions for withholding records from public disclosure. You still need to review a requested record. Examine records with and without markings to identify information that needs protection and is exempt from public release or to decide whether discretionary release is appropriate.

### **Do you know the proper way to mark documents containing FOUO information?**

Unclassified Documents: Mark an unclassified document containing FOUO information "For Official Use Only" at the bottom, on the outside of the front cover (if any), on each page containing FOUO information, on the back page, and on the outside of the back cover (if any).

The originator may also mark individual paragraphs that contain FOUO information to alert users and assist in review.

#### Classified Documents:

Mark an individual paragraph that contains FOUO, but not classified information, by placing "(FOUO)" at the beginning of the paragraph.

The top and bottom of each page that has both FOUO and classified information, with the highest security classification of information on that page.

"FOUO" at the bottom of each page that has FOUO but not classified information.

Other Records: Other records, such as computer printouts, photographs, films, tapes, or slides, "For Official Use Only" or "FOUO" so the receiver knows the records contains FOUO information.

Mark FOUO material sent to authorized persons outside the DoD with an explanation typed or stamped on the document as follows:

This document contains information  
EXEMPT FROM MANDATORY DISCLOSURE UNDER THE FOIA.  
Exemption(s) \_\_\_\_\_ apply (applies).  
(Further distribution is prohibited without the approval of (enter OPR)).

**Do you have documents in your office that is routinely marked FOUO?**

Documents that have been marked FOUO for the past several years should be reviewed against the FOIA exemptions to ensure the FOUO marking is still appropriate. For instance, personal information alone (social security numbers and home addresses) does not arbitrarily justify FOUO markings.

While personal information is protected by the Privacy Act and can be sanitized from the document prior to public release, the personal information alone does not make the document FOUO.

**Do you know how to safeguard FOUO records?**

During normal duty hours. Place FOUO records in an out-of-sight location if people who work for the government come into the work area.

During Nonduty Hours. Store FOUO records to prevent unauthorized access. File them with other unclassified records in unlocked files or desks, etc., if the Government or a Government contractor provides normal internal building security. When there is no internal security, locked buildings or rooms usually provide adequate after-hours protection. For additional protection, store FOUO material in locked containers such as file cabinets, desks, or bookcases.

**Does the status of documents marked FOUO change when they are released to the public?**

When a FOUO document is released to the public, all FOUO markings must be removed prior to release. Once the document has been released, the FOUO status for that document has ended; all known holders of the document must be told so they can take action to remove the FOUO markings.

Everyone must ensure documents being designated FOUO are in fact FOUO. DOD 5400.7R/AF Sup 1, paragraph 26, explain FOUO and paragraph 10 provides a definitive explanation of the nine FOIA exemptions.

**Do you know the proper procedures to destroy FOUO material?**

Destroy duplicate or extra copies of FOUO materials by tearing each copy into pieces to preclude reconstruction, and place these torn pieces in regular trash containers. When the information needs more protection, local authorities may use other methods. However, balance any additional expense against the degree of sensitivity of the FOUO information in the records. Recycling FOUO material is an option. Safeguard the FOUO documents or information until recycling occurs to preclude unauthorized disclosure. Recycling contracts must include a clause to address FOUO and PA safeguarding and destruction methods.

# HELD IN ABEYANCE CATEGORY CLARIFICATION

<Unit address>

<Requester's Name and Address>

Dear <Requester's Name>

This is in response to your Freedom of Information Act request of <date>, The Freedom of Information Act of 1986 categorized requesters for purpose of fee assessment. Categories are as follows:

a. Commercial Requester - one who seeks information for a use or purposes that furthers the commercial, trade, or profit interest of the requester. Fees are assessed for search, review, and duplication of documents.

b. Educational or Noncommercial Scientific Institution or News Media Requesters - pre-school, public or private elementary or secondary school, institution of graduate higher education, etc., that operates a program of scholarly research. Noncommercial scientific institution refers to an institution that is not operated on a commercial basis and is operated solely for scientific research. Fees are assessed for duplication of documents, excluding charges for the first 100 pages.

c. All Others - requesters who do not fall in the above categories. Fees are assessed for search (excluding the first 2 hours), and duplication (excluding the first 100 pages).

In order to assign your request to the proper category, we need additional clarification as to the use to which you will put the documents requested. We also need your assurance that you will pay assessable costs appropriate for the category as determined by this agency.\*

Pending receipt of your letter of clarification and agreement to pay costs associated in fulfilling your request, we will hold the processing of your request in abeyance. Send your reply to the above address.

Sincerely

XXXXXXXXXXXXXXXXXXXXX  
Freedom of Information Act Manager

\***Note:** Vary this portion of the response upon what the requester has agreed to pay in the request.

# NOTIFICATION OF OVERDUE PAYMENT TO REQUESTER

<Unit address>

<Requester's Name and Address>

Dear <Requester's Name>

On <date>, <name and title of person who signed release letter>, responded to your Freedom of Information Act request and released <indicate what was provided to the requester>.

We assessed a fee of <amount> for processing your request and asked you to remit that amount. This is to remind you that it has been over 30 days since we sent you <describe records sent>, and we haven't received your remittance.

Please consider our position and understand that our regulations will not allow us to process any further requests from your company if you do not send your payment for the records you received. In your initial request of <date>, you indicated a willingness to pay <amount they agreed to pay>.

We regret having to take this action; however, we believe our good faith in releasing the records should be honored by your remittance. Please make your check payable to <address and account number> and send it to the above address.

Sincerely

XXXXXXXXXXXXXXXXXXXXX  
Freedom of Information Act Manager

# FEES ACCEPTANCE NOTIFICATION TO REQUESTER

<Unit address>

<Requester's Name and Address>

Dear <Requester's Name>

Reference your letter of <date of request>, which requested <described records requested>. We received your letter on <date letter was received>.

In your request, you <did><did not> accept fees. Due to the amount of this request, it is necessary to advise you of the estimate of fees and ask for your written acceptance. Estimated fee for processing your request is <fee estimate, provided to you by OPR>. When the request is finalized, the fees may be either more or less than this estimate. Process fee includes <search time, review time, and duplicating costs, whichever is applicable, determined by requester's category>.

Please acknowledge acceptance of fees. Processing your request will be held in abeyance pending your written acceptance. Our FOIA case number is <case number>; please refer to this number in your response.

Sincerely

XXXXXXXXXXXXXXXXXXXXX  
Freedom of Information Act Manager

*Note:* Vary to fit category.



# FEES - HELD IN ABEYANCE NOTIFICATION TO OPR

MEMORANDUM FOR <OPR for Records>

FROM <Your Office Symbol>

SUBJECT: Freedom of Information Action (FOIA) Request - <describe FOIA request, i.e., requester name, unit,> - <FOIA Case number>

1. We received the attached FOIA request from <requester's name> and have assigned the FOIA case number referenced above.

2. <Requester's name> requested <describe records requested>. They requested to be notified if the fees exceed <amount of fees>. We notified them that your estimate is <estimated fee> and have asked for an acceptance of fees.

3. This request will be held in abeyance until we hear from them. When they respond, we will let you know and assign a suspense date for completion of action required by DOD 5400.7R/AF SUP 1. If you have any questions, please call the undersigned at <phone number>.

XXXXXXXXXXXXXXXXXXXXX  
Freedom of Information Act Manager

# FAILURE TO RESPOND - CASE CLOSED

<Unit address>

<Requester's Name and Address>

Dear <Requester's Name>

References:

a. Your letter of <date of letter>, addressed to <address of request>, which requested <describe records requested>.

b. Our letter of <date of letter> requesting fees acceptance.

We normally give requesters about thirty days to respond. Since you have not responded, we have closed your request.

Sincerely

XXXXXXXXXXXXXXXXXXXXX  
Freedom of Information Act Manager

# FEE ASSESSMENT - COMMERCIAL REQUESTERS

<Unit address>

<Requester's Name and Address>

Dear <Requester's Name>

This is in response to your Freedom of Information Act request of <date of request>. The Freedom of Information Reform Act of 1986 provides that commercial requesters be assessed charges that recover the full direct costs of searching for, reviewing for release, and duplicating the records sought.

In order to process your request, we must have your assurance that you will pay the fee for the above actions required in responding to your request.

OR

You indicate you are willing to pay <reproduction costs><search costs><search and reproduction costs>. In order to process your request, we must have your assurance that you will also pay the costs for <reviewing> the requested documents for release determination.

Pending receipt of your agreement to pay the costs associated in fulfilling your request, we will hold the processing of your request in abeyance. Send your reply to the above address.

Sincerely

XXXXXXXXXXXXXXXXXXXXX  
Freedom of Information Act Manager

**Note:** Tailor your response to fit the individual case and category.

# FEE WAIVER RESPONSE

<Unit address>

<Requester's Name and Address>

Dear <Requester's Name>

Reference your Freedom of Information Act request of <date of request>.

A determination has been made <to waive> <not to waive\*> the fee to process your request.

Sincerely

XXXXXXXXXXXXXXXXXXXXX  
Freedom of Information Act Manager

\*If a decision is made not to waive or reduce fees, provide requester justification for your decision. FOIA managers may deny initial requests for fee waivers. However, coordinate with HQ AFRC/SCTI FOIA manager by phone on all denials of fee waiver requests.

**Note:** Make each fee waiver determination on a case-by-case basis using the information provided in each request. If an element of doubt exists as to whether to charge or waive the fee, and you cannot resolve it, rule in favor of the requester.

# ACKNOWLEDGING RECEIPT OF FOIA REQUEST

<Unit address>

<Requester's Name and Address>

Dear <Requester's Name>

We received your Freedom of Information Act (FOIA) request dated <day> Month year, for <summarize the request> on <day> Month year <date received>. We will provide you our release determination by <enter date that is 20 workdays from date you received the request>.

Please contact <name and commercial telephone number> if you have any questions and refer to case number <enter case number>.

Sincerely

XXXXXXXXXXXXXXXXXXXXX  
Freedom of Information Act Manager

**Note:** Describe any unusual problems (i.e. request was misrouted). Vary to fit situation.

# MULTITRACK PROCESSING LETTERS TO FOIA REQUESTERS

<Unit address>

<Requester's Name and Address>

Dear <Requester's Name>

We received your Freedom of Information Act (FOIA) request dated < day month year>, for a copy of <summarize the request>. Based on our initial review, we believe we cannot process your request within 20 workdays.

Because our organization has a significant number of pending FOIA requests, which prevents us from making a response determination within 20 workdays, we have instituted multi-track processing of requests. Based on the information you provided, we have placed your request in the <simple or complex> track.

In your case, processing your request is complex because <give basic reasons this is a complex case>.

Simplifying your request might permit quicker processing in the following ways:  
<describe ways the search could be narrowed to fewer records, or ways policy issues could be avoided, etc.>

We have assigned number <enter case number> to identify your request; should you need to contact us about your request.

Sincerely

XXXXXXXXXXXXXXXXXXXXX  
Freedom of Information Act Manager

# REQUEST TO EXPEDITE PROCESSING OF A FOIA REQUEST

<Unit address>

<Requester's Name and Address>

Dear <Requester's Name>

Because individuals receiving expedited processing may receive a response before other earlier requesters, there are administrative requirements you must meet before we can expedite a request. In your request, you asked that we expedite processing. In order for us to expedite a request, the requester must provide a statement certifying the reasons supporting their request are true and correct to the best of their knowledge.

There are four categories of requests eligible for expedited processing. We can expedite your request if you demonstrate you need the information because (1) failure to obtain the records on an expedited basis could pose an imminent threat to life or physical safety of an individual; or (2) the information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public about actual or alleged Federal Government activity; or (3) failure to obtain the records on an expedited basis could lead to an imminent loss of substantial due process rights, or (4) release would serve a humanitarian need by promoting the welfare and interests of mankind. In the second category, "urgently needed" means the information itself has a particular value that it will lose if it is not disseminated quickly.

In this case, we have determined your FOIA request <will/will not> receive expedited processing. We came to this conclusion because you <did /did not> demonstrate you need the information because failure to obtain the records on an expedited basis <could or could not> reasonably expect to pose an imminent threat to life or physical safety of an individual <or> the information <is or is not> urgently needed in order to inform the public about actual or alleged Federal Government activity (or) failure to obtain the records on an expedited basis <could or could not> reasonably expect to lead to an imminent loss of substantial due process rights, (or) release <would or would not> serve a humanitarian need by promoting the welfare and interests of mankind <and/or> your request for expedited processing did not meet the statutory requirements of the FOIA; you did not provide enough information to make a determination of compelling need for the information you requested <and/or> you did not properly certify your request.

Sincerely

XXXXXXXXXXXXXXXXXXXXX  
Freedom of Information Act Manager

# DENYING A REQUEST FOR EXPEDITED PROCESSING

Add paragraph below to memo on previous page:

If you consider our decision not to expedite your request incorrect, you may appeal our decision. Include in your appeal letter the reasons for reconsidering your request for expedited processing, and attach a copy of this letter. Address your appeal to:

Secretary of the Air Force  
THRU: HQ AFRC/SCTI (FOIA Office)  
155 Richard Ray Blvd  
Robins AFB GA 31098-1635

In the meantime, we will continue to process your request in the <simple/complex> processing track.



# HELD IN ABEYANCE - RECORDS CLARIFICATION

<Unit address>

<Requester's Name and Address>

Dear <Requester's Name>

Reference your letter of <date>, which requested information under the Freedom of Information Act (FOIA), <describe records requested>.

We are not sure what documents are responsive to your request. Air Force Instruction 37-131 requires that a requester must be reasonably specific in identifying each record sought. Before processing your request, we need better identification of the records you are seeking. Processing of your request will be held in abeyance until we receive your response. Our FOIA case number for this request is <FOIA case number>; please refer to it in your response.

Sincerely

XXXXXXXXXXXXXXXXXXXXX  
Freedom of Information Act Manager

# SUSPENSE TO OPR

MEMORANDUM FOR «OPR»

FROM: <FOIA Office>

SUBJECT: Freedom of Information Act Request (SUSPENSE: «Suspense»)

1. Attached request from «Requester» is forwarded for processing according to DoD 5400-7R/AF Sup 1, DoD Freedom of Information Act Program. As OPR, you must immediately review the request and determine if the records requested are releasable or nonreleasable.

2. The following steps should be taken in processing this request:

a. **Fees:** Advise this office prior to processing the request if the fees will exceed «Fees».

b. **Partial Denial or Full Denial:** Before any information can be denied it must meet one or more of the exemptions authorized in DoD Regulation 5400-7/AF Supplement 1. Therefore, if you recommend denying portions or all of the records, your response to this office must include:

(1) Exemption(s) claimed, by paragraph

(2) Justification for recommended denial (partial or full)

(3) Statement of harm that would result if we released the requested information

(4) For recommended partial denial response, send two legible copies of the requested records, one of which is redacted to identify segments recommended for denial, identifying the FOIA exemption for each portion recommended for denial and the second copy should be a complete unredacted copy

c. **No Records Response:** If the records cannot be identified or do not exist, prepare a memorandum, signed at division level, stating which areas were searched and how the determination was made. The JA ***must*** coordinate on this recommendation prior to returning to the package to this office.

d. **Releasable Records:** If the records are to be released in full, prepare a memorandum addressed to this office, with releasable documents attached, signed at division level, stating that records are releasable. If the records are of considerable volume, provide this office a cost estimate associated for replying to this request prior to gathering the records.

3. Suspense for completing any of the above actions on this request is «Suspense». The completed package must include a DD Form 2086 (atch 2). This form ***must*** be completed.

4. Please contact <FOIA manager's name/phone number> if you have any questions about processing this FOIA request or if you have a problem meeting the established suspense.

XXXXXXXXXXXXXXXXXXXXX  
Freedom of Information Act Manager



# POSITION LETTER TO CONTRACTOR

<Unit Address>

<Requester's Name and Address>

Dear <Requester's Name>

We received a request under the Freedom of Information Act (FOIA) concerning contract <contract number>. The following information has been requested pertaining to the award of this contract: <describe records or attach copies of the records requested, if practical>.

To comply with Executive Order 12600, we are required to notify you of requests for records containing confidential commercial information and afford you a reasonable period of time to object to disclosure. Please review the records and give us the information outlined in the attachment.

We must have your reply not later than <suspense date, usually 20 calendar days>. If you fail to respond to this letter in writing by then, we will consider your failure to do so to mean you have no objections to public release of the contract information as requested.

If you have any questions, please call <give name and commercial phone number>.

Sincerely

XXXXXXXXXXXXXXXXXXXXX  
Freedom of Information Act Manager

Attachment  
Requirements of Exemption (b)(4) 5 U.S.C. 552

## **REQUIREMENTS OF EXEMPTION 5 U.S.C. 552(b)(4)**

The Freedom of Information Act (FOIA), requires federal agencies to provide all agency records, unless specifically exempted, for public inspecting and copying, Section (b) of the Act contains nine exemptions that are the only basis for withholding records from the public.

In this case, the fourth exemption, 5 U.S.C. 552(b)(4), may apply to the records or information provided the Air Force. This exemption provides that agencies may withhold trade secrets and commercial or financial information obtained from a person or organization outside the government which is privileged or confidential. This generally includes information provided and received with the understanding that it will be retained on a privileged or confidential basis, in accordance with the customary handling of such records.

Commercial or financial matter is "confidential" for purposes of the exemption if disclosure of the information is likely to have either of the following effects: (1) to impair the Government's ability to obtain necessary information in the future; (2) to cause substantial harm to the competitive position of the source providing the information, or impair some other legitimate government interest.

The exemption may be invoked for the benefit of that source when public disclosure is likely to cause substantial harm to its competitive position. Examples of information that may qualify for this exemption include:

- a. Commercial or financial information received in confidence in connection with loans, bids, contracts, or proposals, as well as other information received in confidence or privileged, such as trade secrets, inventions, discoveries, or other proprietary data.
- b. Statistical data and commercial or financial information concerning contract performance, income, profits, losses and expenditures, if offered and received in confidence from a contractor or potential contractor.
- c. Personal statements given in the course of inspections, investigations, or audits, when such statements are received in confidence from the individual and retain in confidence because they reveal trade secrets or commercial or financial information normally considered confidential or privileged.
- d. Financial data provided in confidence by private employers in connection with locality wage surveys that are used to fix and adjust pay schedules applicable to the prevailing wage rate of employees within the Department of Defense.
- e. Scientific and manufacturing processes or developments concerning technical or scientific data or other information submitted with an application for a research grant, or with a report while research is in progress.

f. Technical or scientific data developed by a contractor or subcontractor exclusively at private expense, and technical or scientific data developed in part with Federal funds and in part at private expense, wherein the contractor or subcontractor has retained legitimate proprietary interests in such data in accordance with 10 U.S.C. 2320-2321 and DoD Federal Acquisition Regulation Supplement (DFARS), Chapter 2 of 48CFR227.4.

g. Computer software that is copyrighted under the Copyright Act of 1976 (17 U.S.C. 106), the disclosure of which would have an adverse impact on the potential market value of a copyrighted work.

If release of the subject material would prejudice your commercial interests, give us detailed factual reasons, in writing, identifying which specific information you believe will cause what specific kind of competitive harm to you, your organization, or your business.

The Act requires we provide any reasonably segregable portion of a record after deletion of exemption portions. So, if the deletion of key words or phrases would adequately protect your interests, please so indicate.

**If you do not substantiate the likelihood of substantial harm to your competitive position or other commercial interests, we may be required to release the information.** Records must qualify for these protections on a case-by-case basis.

# NOTIFICATION OF TIME EXTENSION (Contract Related)

<Unit Address>

<Requester's Name and Address>

Dear <Requester's Name>

We received your Freedom of Information Act request on <date of request>. Your request was forwarded to this headquarters for processing as a partial denial.

To comply with Executive Order 12600, we are required to notify the contractor of requests for records containing confidential commercial information and afford them a reasonable amount of time to object to disclosure before the Air Force makes a release determination.

We will respond not later than <suspense date, usually 30 calendar days>.

Sincerely

XXXXXXXXXXXXXXXXXXXXXXX

Director, Communications and Information

# LETTER TO CONTRACTOR

## AIR FORCE DECISION TO RELEASE RECORDS

<Unit address>

<Requester's Name and Address>

Dear <Requester's Name>

We have reviewed your comments of <date>. After carefully considering your rationale, we determined the records are releasable because <give reason you feel records should be released>. We will release the records on <enter a date here that is at least two weeks from the date of this letter>.

Sincerely

OR

<Unit address>

<Requester's Name and Address>

Dear <Requester's Name>

We have received no response to our letter <date of letter> and we determined the records are releasable because <include a brief explanation>. We will release the records on <enter a date that is at least two weeks from the date of this letter>.

Sincerely

XXXXXXXXXXXXXXXXXXXXX  
Freedom of Information Act Manager

**Note:** When making a partial release, identify those parts or records either in the body of the letter or add as an attachment. Change the wording if needed; however, you must include a brief statement about why you are releasing the records over their objections and you must include the projected release date.



# TOTAL RELEASE - FEES WAIVED

<Unit address>

<Requester's Name and Address>

Dear <Requester's Name>

This is in response to your Freedom of Information Act request <date of request> for <describe records requested>.

A determination has been made that the information requested is releasable under the Freedom of Information Act and is being furnished to you without charge.

Sincerely

XXXXXXXXXXXXXXXXXXXXX  
Freedom of Information Act Manager

Attachment:

<Releasable Records>

# REQUEST WITHDRAWN

MEMORANDUM FOR <OPR for Records>

FROM <Your Office Symbol>

SUBJECT: Freedom of Information Action (FOIA) Request - <describe FOIA request, i.e., requester name, unit.> - <FOIA Case number>

1. Reference our letter of <date of letter>.
2. <Requester's name> rescinded their FOIA request on <date rescinded>. No further action is required on this request.

XXXXXXXXXXXXXXXXXXXXX  
Freedom of Information Act Manager

# NOTIFICATION OF MASS MAILING RESTRICTIONS

<Unit address>

<Requester's Name and Address>

Dear <Requester's Name>

Reference your Freedom of Information Act Request dated <date of request>. Your request was received at this headquarters on <date received>.

The <unit designation> Staff Directory is releasable and is being furnished to you at no charge.

Base mailrooms will not deliver unofficial mass mailings addressed to individuals at their duty address. (Reference DoD 4525.8-M, Official Mail Manual).

Sincerely

XXXXXXXXXXXXXXXXXXXXX  
Freedom of Information Act Manager

Attachment:  
<attachment>

# NOTIFICATION OF TIME EXTENSION

<Unit address>

<Requester's Name and Address>

Dear <Requester's Name>

We received your <date of request> Freedom of Information Act request on <date of receipt>.

To process your request properly, we need a time extension because (end the sentence with one of the following reasons):

we need to collect the records you requested from another location; <or>

we need to search for, collect, and examine a substantial number of records; <or>

we must consult with another (enter one or more the following that apply: Air Force activity, DOD component or government agency) to determine the releasability of the records you requested.

We will respond not later than <give a date that is not more than 20 workdays from the initial receipt of the request>.

Sincerely

XXXXXXXXXXXXXXXXXXXXX  
Freedom of Information Act Manager

# TOTAL RELEASE - FEES ACCESSED

<Unit address>

<Requester's Name and Address>

Dear <Requester's Name>

A determination has been made that the record<s> requested in your letter of <date of letter> <is><are> is releasable under the Freedom of Information Act.

Air Force Instruction 37-131 provides that a charge of <amount of fees to be charged> be assessed for providing these records. Please make your check in this amount payable to ADSN ( ) AFO <base providing records> and forward it to <unit address>.

Copies of the record<s> you requested are attached.

Sincerely

XXXXXXXXXXXXXXXXXXXXX  
Freedom of Information Act Manager

Attachment:

<Releasable Records>

# FORWARDING LETTER TO HQ AFRC/SCTI (FOIA OFFICE)

MEMORANDUM FOR HQ AFRC/SCTI (FOIA Office)  
155 Richard Ray Blvd  
Robins AFB GA 31098-1635

FROM: <Your Address>

SUBJECT: Transfer of Freedom of Information Request - ACTION MEMORANDUM

Reference the attached Freedom of Information Act (FOIA) request, <date of request>, from <requester's name>. Package is forwarded for your action and reply to the requester. The requester has been notified of this action.

XXXXXXXXXXXXXXXXXXXXX  
(must be signed by) COMMANDER

## Attachments:

1. Letter of Transmittal
  2. Original Request w/envelope
  3. JA Written Opinion\*
  4. Sanitized Records
  5. Unsanitized Records
  6. DD Form 2086, Record of Freedom of Information
- Processing Costs (If more than one form because of more than one OPR consolidate the forms.)
7. Other Administrative Processing Documents (i.e. suspense letter, extension letter - all documents generated in processing the case, but not identified in other attachments)
  8. Copy of letter notifying requester of transfer to HQ AFRC/SCTI for further processing

*\*Package will be returned if this is not included.*

# NOTIFICATION TO REQUESTER (Partial/Total Denial/ "No Records" Determination)

<Unit address>

<Requester's Name and Address>

Dear <Requester's Name>

Your Freedom of Information Act request dated <date of request>, for a copy of <describe records requested>. We have referred your request to Air Force Reserve Headquarters FOIA office for further administrative action. They will respond directly to you. Address any questions concerning your request to the following:

HQ AFRC/SCTI (FOIA Office)  
155 Richard Ray Blvd  
Robins AFB GA 31098-1635

Sincerely

XXXXXXXXXXXXXXXXXXXXX  
Freedom of Information Act Manager

# REFERRAL NOTIFICATION TO FOIA OFFICE

MEMORANDUM FOR <Unit Address>

FROM: <Your Address>

SUBJECT: Transfer of Freedom of Information Request

The attached FOIA request from <requester> is being forwarded to your office for action and reply to the requester. The requester has been notified of this transfer.

Sincerely

XXXXXXXXXXXXXXXXXXXXX  
Freedom of Information Act Manager

Attachments:

1. FOIA Request, <date of request>
2. <Memo advising requester of transfer>, <date of memo>

**Note:** Confirm, by calling the FOIA Office where you are transferring request, that they originated the records.



# REFERRAL NOTIFICATION TO REQUESTER

<Unit Address>

<Requester's Name and Address>

Dear <Requester's Name>

We are responding to your <date of request> Freedom of Information Act request. We have no records concerning <describe records requested>. We have forwarded your letter to <full address where request was forwarded, include POC and telephone number if available>. They will reply directly to you.

Sincerely

XXXXXXXXXXXXXXXXXXXXX  
Freedom of Information Act Manager

# TOTAL RELEASE REFERRAL LETTER

MEMORANDUM FOR <Unit Address>

FROM: <Your Address>

SUBJECT: Freedom of Information Act (FOIA) Request - **<Describe Request>** - ACTION  
MEMORANDUM

1. We received a FOIA request from <requester's name> (atch 1), which requested the following:

- a. <describe records requested>.
- b. <describe records requested>.
- c. <describe records requested>.

2. We have provided the requester documents in paragraphs < > and < > above. **<OPR for records>** has informed us that <unit receiving letter> maintains documents in paragraph < > above. Please process paragraph < > above according to DOD 5400.7R/AF SUP 1.

3. Requester has been notified of this referral. (atch 2).

XXXXXXXXXXXXXXXXXXXXX  
Freedom of Information Act Manager

Attachments:

- 1. FOIA Request, <date of request>
- 2. Referral Memo to Requester, <date of memo>

# CHECKLIST

## PROCESSING FOIA REQUESTS

- ☐ Note the date the request was received; give the request a unique identifier/number. (Note: A FOIA request is considered “received” (and therefore ready to process) when the FOIA office responsible for processing the request physically receives it, when the requester states a willingness to pay fees set for the appropriate fee category, or, if applicable, when the requester has paid any past FOIA debts and has reasonably described the requested records. applicable, when the requester has paid any past FOIA debts and has reasonably described the requested
- ☐ Log the request.
- ☐ Determine what Air Force elements may hold responsive records.
- ☐ Are responsive records kept at the same or different installations?
- ☐ Is referral of *(all/part)* of the request required?
- ☐ Determine appropriate processing track. *(Air Force FOIA offices without backlogs do not multi-track FOIA requests.) NOTE: Requesters have a right to appeal an adverse tracking decision*
  - **Simple**--defines a request that can be processed quickly, with limited impact on the responding units.
  - **Complex**--defines a request whose processing will take substantial time, will cause significant impact on responding units
  - **Expedited**--An expedited request is when a requester asks for expedited processing and explains the compelling need (imminent threat to life or physical safety; urgently needed by a person primarily engaged in disseminating information; due process; or humanitarian need) for the requested information.
    - Four categories of FOIA requests that qualify for expedited processing:
      - Compelling need" for the records, because a failure to obtain records quickly could reasonably be expected to pose an imminent threat to the life or physical safety of an individual.

## Checklist--Processing FOIA Requests (Continued)

- The requester asserts a "compelling need" for the records, because the information is "urgently needed" by an individual engaged in disseminating information to inform the public (primarily news media requesters; and could also include other persons with the ability to disseminate information.
  - Failure to obtain records quickly could cause imminent loss of substantial due process rights *OR* providing the information quickly would serve a "humanitarian need"
- ☐ Determine fee category of requester and assess fee issues. (When all assessable costs are \$15.00 or less--waive fees automatically for all categories of requesters. Assess other fee waiver or reduction requests on a case-by-case basis.)
- Commercial
  - Educational—Noncommercial/Scientific Institution—News Media
  - All Others
- ☐ Apply fee waiver/fee reduction criteria in appropriate cases (when requester asks for fee waiver/reduction.
- ☐ Find the Responsive Air Force Records (if any).
- ☐ Send the request to the appropriate OPRs to search for responsive records and to decide whether to recommend release of any responsive records. Include a DD Form 2086, or a DD Form 2086-1, in each request. The OPR must complete and return the appropriate forms and statements to the FOIA office.
- ☐ If the OPRs find no responsive records, or if the OPRs desire to withhold any responsive records from release to the requester, the OPRs must provide a written certificate detailing either their unsuccessful search or their reasons why the documents should be withheld from release under the FOIA.

# CHECKLIST FOR FORWARDING FREEDOM OF INFORMATION ACT PARTIAL/TOTAL DENIALS TO HQ AFRC/SCTI

NOTE: Make sure to keep a copy of all correspondence (If the responsive documents are voluminous or if they are IG records, make a memo for record with your case file and allow the OPR to keep the responsive documents rather than duplicate copies.)

- ☐ Letter of Transmittal
- ☐ Original Request w/envelope
- ☐ JA Written Legal Opinion
- ☐ Sanitized Records--One Sided Copies (Redactions highlighted in Yellow) (***Important:***  
***Number pages, in pencil, on back of page--bottom corner)***
- ☐ Unsanitized Records--One Sided Copies (Preferably the Original)
- ☐ DD Form 2086, Record Of Freedom of Information Processing Cost
- ☐ Other Administrative Processing Documents:
- ☐ Suspense Letter
- ☐ Extension Letter
- ☐ Any documents generated in processing the case, not identified in other attachments
- ☐ Copy of letter notifying requester of transfer to HQ AFRC/SCTI for further processing

# **CHECKLIST FOR PREPARING THE ANNUAL FREEDOM OF INFORMATION ACT REPORT**

Please check your annual report against the list below before you get it signed and forward to this headquarters. If you read this checklist with the DD Form 2654, Annual Report Freedom of Information Act, it makes a lot more sense.

- ☐ Complete all blocks, except the appeal blocks (items 3, 4a, b, c, and 9c). The appeal blocks for AFLSA use only. Except for items 3, 4a, b, c, and 9c, do not leave any items blank. Enter “0” if appropriate.
- ☐ Item 2b(9) block must include a number with a reason. For example: “FOIA requests with no return address - 2” or “FOIA requests for third party data with no release statement included - 5”
- ☐ Totals for Item 2a(b)(3) and item 2c) (number of instances column) must agree. Item 2c: Use the list of commonly used (b)(3) statutes as your resource. (The list can be found on the Air Force page at <http://www.foia.af.mil>”).
- ☐ Item 7c, “expedited requests” are only those meeting specific criteria outlined in paragraphs C1.5.4.3 through C1.5.4.3.4 of DoD Regulation 5400.7/AF Supplement 1
- ☐ The numbers in items 5a(2) and 5b(2) from last year’s report will be the same numbers you enter in items 5a(1) and 5b(1) for this year’s report.
- ☐ Use this to check you numbers:
  - ☐ Add the number in item 5a(1) to the number in item 6
  - ☐ Then subtract from that total number in item 5a(2)
  - ☐ The result must equal the total in item 1a
- ☐ The total cases in items 7a, b, and c must agree with the total in item 1a